

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 821 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PRAHLADBHAI BHURALAL

Versus

NARANBHAI H SOLANKI

Appearance:

MS SONAL D VYAS for Petitioner

MR NV SOLANKI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. This is landlord revision under sec.29(2) of the Bombay Rent Act against the concurrent judgments and decrees of the two courts below.
2. Shri NV Solanki, learned counsel for the respondent and Ms Sonal Vyas, learned counsel for the revisionist have been heard. The judgments of the two courts below have been examined.
3. The case of the plaintiff/landlord was that, he was permanent lessee of the plot measuring 10 feet x 10

feet, over which he constructed a shop and thereafter, it was let out to the defendant/respondent on monthly rent of Rs.60=00 on February 2, 1974. It was alleged that the defendant fell in arrears of rent from January 2, 1976 to July 1, 1976, which he did not pay despite service of notice of demand dated July 17, 1976. It was also alleged that the landlord required the disputed shop for running his own business and thus, on grounds of personal bonafide and reasonable requirement suit for eviction of the tenant was filed.

4. The tenant/respondent resisted the suit on variety of grounds. He pleaded that he hired open piece of land from the plaintiff/landlord on monthly rent of Rs.20=00 and thereupon, he raised construction in the nature of shop. He, thus, pleaded that it is incorrect that the shop was constructed by the landlord and his shop was let out to the tenant/respondent. He also raised dispute of standard rent and pleaded that the rent at the rate of Rs.60=00 per month was unreasonable and excessive and the standard rent should not exceed Rs.20=00 per month. He also denied that he was in arrears of rent from January 2, 1976. On the other hand, he pleaded that he had paid the rent for the months of January to March, 1976 and thereafter, he remitted two months rent for the month of April and May, 1976 by money order, which was refused by the plaintiff/revisionist.

5. Validity of the notice of demand was also challenged. It was denied that the requirement of the landlord is reasonable, bonafide and genuine.

6. The trial Court dismissed the suit. Appeal was filed by the landlord. Cross-objection was also filed by the tenant. The appeal, as well as, cross-objection were dismissed by the lower Appellate Court. Hence, this revision.

7. The respondent cannot be permitted to put the landlord to strict proof that, he is permanent lessee of the Plot No.47-45-35, in as much as, he admits that he took on lease open plot from the plaintiff. A tenant of open plot cannot be permitted to deny the title of the landlord in the open land.

8. The dispute of standard rent was raised by the tenant. The trial Court found that the standard rent should be Rs.20=00 per month. This finding of the trial Court was confirmed by the lower Appellate Court. The findings of the two courts below on this point are in nature of concurrent findings of fact which do not suffer

from any manifest, illegality or perversity. Consequently, these findings do not require any interference in this revision.

9. No decree for eviction could be passed on grounds of tenant being in arrears of rent for more than six months. Even, in the plaint, it was alleged that the rent was due from January 2, 1976 to July 1, 1976, which is less than six month. Since the arrears of rent did not exceed six month, decree of eviction could not be passed on this ground. Moreover, the trial Court, as well as, the Appellate Court found that the tenant had paid the rent for the months of January to March, 1976. If this was the position then, the tenant could, by no stretch of imagination, be held to be tenant in arrears of rent exceeding six months. The findings of the two courts below regarding payment of rent for these three months is again concurrent findings of fact, which requires no interference in this revision. Likewise, findings of the two courts below that the rent for April and May was sent by money order by the tenant and it was refused by the landlord is again a finding of fact, which requires no interference in this revision.

10. The only point for consideration in this revision is, whether the requirement of the landlord of the suit shop is reasonable, bonafide and genuine. On this point, the findings of the two courts below are against the landlord.

11. These findings also require no interference. In the plaint, the plaintiff initially alleged that he, being permanent lessee of open land, raised a shop over an area of 10 feet x 10 feet and, thereafter it was let out to the respondent on monthly rent of Rs.60=00. The respondent pleaded that only open land was let out to him by the landlord and, that he constructed the shop. It is also pleaded that the super structure does not belong to the landlord. Landlord had to admit in the witness-box that the super structure was raised by the tenant.

12. The lower Appellate Court has categorically observed that, the plaintiff had to admit that he had let out only open land to the defendant and, it is the defendant who had constructed the super structure of a shop on this land. Consequently, the stand of the landlord that, the shop was constructed by him and belongs to him is falsified from his own admission. If, the shop was not constructed by him then, he cannot claim that he requires the shop for running his business.

Even, if a decree for eviction is passed in favour of landlord, the tenant is entitled to remove the super structure and, in that event, the landlord will get possession of the open land. It is, then difficult to conceive the situation that the landlord can run his business over the open land. The lower Appellate Court has considered the entire material and evidence on record and also the circumstances of the case. The lower Appellate Court has rightly observed that the landlord has failed to establish that his requirement is either reasonable or bonafide. For coming to this conclusion, the lower Appellate Court has relied upon certain evidences and circumstances which may safely be reproduced here. The first circumstance that, the plaintiff admitted that his eyesight is very week and his vision is only to the extent of 15 to 20 percent. On such admission the lower Appellate Court was justified in observing that, for all purposes the plaintiff is a blind person. The lower Appellate Court further found from the evidence that the landlord has no capital to start any business. It further found that the landlord did not disclose what kind of business is proposed to be started by him. At one stage, the landlord stated that he intended to run the business in partnership with other persons. Still, he failed to disclose the names of the persons with whom he intended to enter into partnership agreement nor, did he disclose the nature of business to be run by him in partnership. He further admitted that, he had no money to construct a new shop over open piece of land. How could then he say that the requirement for the shop is genuine, bonafide and reasonable ?

13. On these facts, two courts below were justified in concluding that, the requirement of the landlord was neither reasonable nor bonafide. If the findings of the two courts below on the genuine and bonafide requirement of the landlord were in negative, the two courts below were not obliged to consider the question of comparative hardship. Still, the lower Appellate Court, on assumption, has considered the comparative hardship and found that the tenant will suffers greater hardship in case decree for eviction is passed against him. In so doing, which was not at all necessary, the lower Appellate Court cannot be said to have committed any illegality. The lower Appellate Court has also observed that, substantial amount of rent has been deposited in the trial Court as well as in the Appellate Court. In such circumstances, the suit of the landlord/revisionist was rightly dismissed by the two courts below.

14. I, therefore, do not find any merit in this

revision, which is hereby dismissed with no order as to costs.

October 6, 2000. (D.C. Srivastava, J.)
/sakkaf